Supreme Court, U.S.
FILED
JUN 27 1996
CLERK

No. 95-1662

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, AFL-CIO; and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Petitioners,

v.

JANET RENO, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

JONATHAN P. HIATT
815 16th Street, N.W.
Washington, D.C. 20006

JOHN T. DECARLO
500 South Virgil Avenue
Fourth Floor
Los Angeles, CA 90020

BRIAN A. POWERS
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20116

STEPHEN P. BERZON
(Counsel of Record)
MARSHA S. BERZON
DANIEL T. PURTELL
SCOTT A. KRONLAND
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
ARGUMENT	1
CONCLUSION	7

TABLE OF AUTHORITIES

CASES

Connecticut Nat. Bank v. Germain, 503 U.S. 249 (1992)	4
Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987)	4
Joyce v. Clyde Sandoz Masonry, 871 F.2d 1119 (D.C. Cir.), *cert. denied*, 493 U.S. 918 (1989)	3
Morales v. Trans World Airlines, 504 U.S. 374 (1992)	4
United States v. Borden Co., 308 U.S. 188 (1939)	4

STATUTES

28 U.S.C. § 158	4
28 U.S.C. § 1291	4
43 U.S.C. § 1333(a)(1)	2, 3, 5
43 U.S.C. § 1356	*passim*

REGULATIONS

22 C.F.R. § 41.105(a)(4)	5-6
22 C.F.R. § 41.108(a)	6

MISCELLANEOUS

H.R. Conf. Rep. No. 95-372, 95th Cong., 2d Sess. (1978), *reprinted in* 1978 USCCAN at 1450	5
Terrorism and America: A Comprehensive Review of the Threat, Policy, and Law, Hearing before the Senate Judiciary Committee, S. Hrg. No. 581, 103rd Cong., 1st Sess. (1993)	6
Terrorism, Asylum Issues, and U.S. Immigration Policy, Hearing Before the Subcommittee on Immigration and Refugee Affairs of the Senate Judiciary Committee, S. Hrg. No. 595, 103rd Cong., 1st Sess. (1993)	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-1662

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, AFL-CIO; and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Petitioners,

v.

JANET RENO, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

REPLY BRIEF FOR PETITIONERS

ARGUMENT

1. The position respondents have advocated and the court below adopted is that the INA has no application *at all* to the OCS. Because of that broad holding, this case, as respondents recognize, would provide this Court with the opportunity to pass on the "Executive Branch's interpretation of the geographic limits of its obligations to enforce the visa scheme" set up in the INA, (Opposition at 18).

A divided Court of Appeals held that the INA does not extend to the OCS, even though Congress provided, as the fundamental premise of the OCSLA, that "[t]he Constitution and laws and civil and political jurisdiction of the

United States *are* extended" to the OCS "as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a state." 43 U.S.C. § 1333(a)(1) (emphasis supplied). Whether the Court of Appeals majority is correct on this issue of law is a question meriting an answer by this Court.[1]

2. By never referring to the language of the 1978 OCSLA Amendments, respondents leave no doubt that their "interpretation" of what Congress intended is not grounded in what Congress said in the pertinent statutes. The reasons given for dismissing that plain meaning construction, moreover, are wholly unpersuasive.

We have no quarrel with the statutory construction cannon dictating that courts should avoid reading a statute so as to "render[ ] some words altogether redundant," and instead should prefer a reading that "give[s] effect, if possible, to *every word* Congress used." Opposition at 10 (citations omitted, emphasis in original). But, as we pointed out in the Petition (at pp. 15-19), reading § 1356 in accordance with its language *does* give effect to every word.

Section 1356, which covers "any vessel, rig, platform, or other vehicle or structure" used for OCSLA activities, directs the Coast Guard to promulgate regulations setting forth *three* requirements for those vehicles and structures: that they (i) be "documented under the laws of the United States," (ii) "comply . . . with . . . minimum standards of design, construction, and repair," and (iii) "be manned or crewed . . . by citizens of the United States or aliens lawfully admitted to the United States for permanent resi-

---

[1] The Opposition alludes to a "collateral estoppel" issue raised in the court below (Opposition at 9 n.5), but does not mention that one of the two union plaintiffs here is not even claimed to have been involved in a relevant prior case (*see* Pet. App. 22a n.4). The collateral estoppel issue thus is not a substantial one, and this case provides an appropriate vehicle for the Court to answer the Question Presented by the Petition.

dence." § 1356(a)(1), (2) & (3). So long as at least one of these three requirements is applicable to each of the categories of objects ("vessel, rig, platform, or other vehicle or structure")—a test that easily is passed—then *no* word, phrase or provision in § 1356 is without effect. The Court of Appeals' ruling in this case that something *more* is required for statutory language not to be meaningless is in conflict with common sense and its own prior decisions. *See, e.g., Joyce v. Clyde Sandoz Masonry*, 871 F.2d 1119 (D.C. Cir.), *cert. denied*, 493 U.S. 918 (1989) (rejecting argument that certain statutory language was superfluous with respect to the particular issue before the court, because "in a host of claims arising out of the subtitle, section 1451(f)(2) retains independent significance").

Indeed, even if one focusses incorrectly, as respondents do, solely on the third prong of § 1356—the "manning and crewing" requirement—that requirement does have independent effect, and does not merely parrot INA nonimmigrant visa requirements, with respect to *every* category of vehicle or structure covered by § 1356, including oil platforms. *See* Petition at 16-18. And the same is true of the foreign ownership *exception* to the "manning and crewing" regulations. *Id.*

The basic flaw in respondents' statutory construction methodology is that it proceeds from a preordained conclusion, first positing Congressional intent to exempt certain foreign-owned OCS structures from the INA labor certification requirements, and then dismissing the plain words reading of the statute as at odds with what Congress intended.

Similarly flawed is Respondent's argument based on "the cannon of construction that specific statutory provisions govern more general ones" (Opposition at 13). The cannon itself is perfectly sensible, but its application here is not, because § 1356 and the INA (made applicable to the OCS by § 1333(a)(1)) are *not* inconsistent *by their*

terms. The Court therefore need not choose *between them*, as was the situation in the "specific vs. general" cases relied upon in the Opposition. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (requiring the Court to decide whether a general provision regarding cost awards "repealed" a specific provision addressing witness fees); *Morales v. Trans World Airlines*, 504 U.S. 374, 384-85 (1992) (requiring the Court to determine whether a general savings clause "supercede[d]" a specific substantive preemption provision).

Where, as here, two statutes are *not* by their terms inconsistent, the applicable cannon of construction is the cannon applied in *Connecticut Nat. Bank. v. Germain*, 503 U.S. 249 (1992), which instructs that where two statutes overlap in part, but "giving effect to both . . . would not render one or the other wholly superfluous," then "a court must give effect to both" *Id.* at 253. *See also United States v. Borden Co.*, 308 U.S. 188, 199 (1939) ("Where there are two acts upon the same subject, the rule is to give effect to both" unless there is a "positive repugnancy" between the two).

In *Germain*, for example, the Court dealt with two statutes governing review by courts of appeals. One statute conferred jurisdiction to hear appeals from "final decisions of the district courts" acting in any capacity. *Id.*, quoting 28 U.S.C. § 1291. The other, arguably more specific statute conferred jurisdiction to review decisions of the district courts acting as bankruptcy appellate courts and of special bankruptcy appellate panels. *Id.*, citing 28 U.S.C. § 158. Yet this Court squarely rejected the argument that *only* the more "specific" statute governs bankruptcy appeals, finding the language of both statutes to be unambiguous as to their scope, and refusing to read one statute as displacing the other "by negative implication" where both statutes could be applied. *Id.* at 253.

To be sure, *if* respondents in this case were correct that § 1356 is "a self-contained statement of the extent to

which principles of immigration control are to be applied to the OCS" (Opposition at 12-13 (citation and internal quotes omitted)), *then* § 1356 would be both inconsistent with and more specific than the INA and § 1333(a). But that is, again, to beg the question to be decided, substituting a conclusion about what Congress intended for what Congress actually said in § 1356.

3. Although recognizing that "some alien workers proceed directly to the OCS without passing through the United States" (Opposition at 15) and that the INA visa requirements provide "some additional protection against the dangers" described in the Petition (*id.*)—terrorism, sabotage, etc.—respondents still resist the obvious conclusion that the 1978 Congress would not have *sub silentio* made the INA the only generally applicable U.S. law that does *not* apply on the OCS.[2]

The Court is told, first, that INA visa requirements are not all that important with respect to *nonimmigrant* aliens, as two documentary requirements for immigrant visas are not required for *nonimmigrant* visas. (In fact, those documents are required for nonimmigrant visas at the discretion of consular officers. *See* 22 C.F.R.

---

[2] The Opposition misleadingly suggests that the INA would apply to the workers in this case only because of the 1978 OSCLA Amendments, and therefore that no "implied repeal" of the INA has occurred. *See* Opposition at 7 ("before 1978, the INA did not apply to workers on derrick barges or oil platforms on the OCS because those units were not considered to be 'fixed structures' "). In fact, oil platforms like the platform here, which is attached to the seabed by a foundation of steel legs and infrastructure (Pet. App. 3a), are "fixed structures" within the meaning of the pre-1978 version of 43 U.S.C. § 1333(a). The interpretive dispute resolved by the 1978 Congress concerned whether *floating* platforms are subject to U.S. jurisdiction. *See* cases cited in Petition at 22 n.9. The 1978 Congress answered that question in the affirmative, with an amendment to § 1333(a) "meant to restate and clarify and not change existing law." H.R. Conf. Rep. No. 95-372, 95th Cong., 2d Sess. 80 (1978), *reprinted in* 1978 USCCAN 1450, 1679.

§ 41.105(a)(4) (police certificate) & § 41.108(a) (medical exam).) Thus, respondents explain, protection against terrorism and sabotage by *nonimmigrant* aliens "more realistically depends" upon enforcing the general criminal laws than on enforcing visa requirements. Opposition at 14-15.

But *Congress* obviously thought that visa requirements for nonimmigrants do serve the national interest. And the Opposition's characterization of those requirements is, to put it mildly, so at odds with what the INS and other law enforcement agencies consistently have told Congress that it cannot be taken seriously. For example, Executive Branch officials testifying in the wake of the terrorist attack on the World Trade Center explained in detail how visa requirements for *nonimmigrants,* described as the "first line of defense" against terrorism, are carefully enforced through inter-agency cooperation and a 3.5 million name "lookout" database of excludable persons, and how trained officials' "comprehensive inspection of persons" seeking to enter the United States "provides the best safeguard against known or suspected international terrorists." Terrorism and America: A Comprehensive Review of the Threat, Policy, and Law, Hearing before the Senate Judiciary Committee, S. Hrg. No. 581, 103rd Cong., 1st Sess. 151-58 (1993) ("Terrorism and America"); Terrorism, Asylum Issues, and U.S. Immigration Policy, Hearing Before the Subcommittee on Immigration and Refuge Affairs of the Senate Judiciary Committee, S. Hrg. No. 595, 103rd Cong., 1st Sess. 14-20 (1923) ("Terrorism and Asylum Issues"). Surely respondents cannot be suggesting that the possibility of after-the-fact criminal prosecution is a sufficient deterrent to international terrorism.

After understating the importance of the nonimmigrant visa requirements, respondents then greatly exaggerate the "practical difficulty" of enforcing them on the OCS. No one is suggesting the INS must establish "inspection facili-

ties on every structure on the OCS" (Opposition at 15) any more than that the INS must establish inspection facilities at every point along the U.S.-Canada border or the Alaska coastline. Persons entering the OCS generally are arriving to work, their visas will have been processed at consular offices abroad, and workers unable to obtain visas will *not* be brought by employers to the OCS in the first place.

Further, "strangers" on an offshore oil platform certainly will be easier to spot than in New York City, and will be more likely to have contact with federal officials than in North Dakota, and the limited number of platforms on the OCS can be more effectively monitored than the vast borders of the contiguous United States. There also is no reason why the INS cannot cooperate with the Coast Guard in enforcing the INA, just as it cooperates at present with the State Department, FBI and U.S. Customs Service. *See* Terrorism and America at 152-54; Terrorism and Asylum Issues at 15-16, 18-19. The sum of the matter is that the so-called enforcement difficulties do not actually exist.

CONCLUSION

For the foregoing reasons and those stated in the Petition, this Court should grant the petition for certiorari.

Respectfully submitted,

JONATHAN P. HIATT
815 16th Street, N.W.
Washington, D.C. 20006

JOHN T. DECARLO
500 South Virgil Avenue
Fourth Floor
Los Angeles, CA 90020

BRIAN A. POWERS
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20116

STEPHEN P. BERZON
(Counsel of Record)
MARSHA S. BERZON
DANIEL T. PURTELL
SCOTT A. KRONLAND
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151